

FILED
JUN 09 2010
PATRICK E. DUFFY, CLERK
By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

WILLIAM LEROY JONES, JR.,)	CV 10-18-H-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
CITY OF HELENA DISTRICT)	
ATTORNEY DAVID L. NIELSEN)	
and CITY OF HELENA POLICE)	
DEPARTMENT,)	
)	
Defendants.)	
_____)	

Plaintiff Jones is proceeding pro se. He filed an action pursuant to 42 U.S.C. § 1983. United States Magistrate Judge Keith Strong entered Findings & Recommendations in this matter on May 3, 2010. Plaintiff did not timely object

and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Jones’ complaint alleged Defendant Nielsen denied him video evidence in a criminal trial. He also alleged that City of Helena police officers injured him when they arrested and jailed him. Judge Strong found that Nielsen is entitled to immunity from liability under § 1983 and recommended dismissing him from this matter. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976). Judge Strong also found the claim regarding the video evidence is an attack on the validity of Jones’ criminal conviction and is thus barred by the Heck doctrine.¹ Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Upon review, I can find no clear error with Judge Strong’s recommendations.

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendations (dkt #5) are adopted in full. Defendant Nielsen and Jones’

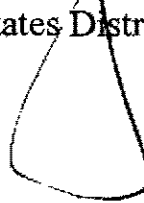
¹ To the extent any exception to Heck may apply, this claim would still be barred by the Younger abstention doctrine because the state criminal proceedings are on-going and the appellate review process is not complete. See Younger v. Harris, 401 U.S. 37 (1971).

claim regarding video evidence are DISMISSED.

Dated this 9th day of June, 2010.

A handwritten signature in black ink, appearing to read 'DMolloy', written above a horizontal line.

Donald W. Molloy, District Judge
United States District Court

A large, stylized handwritten mark or flourish, possibly a large 'D' or a similar symbol, extending downwards from the signature area.